

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-219662
MATTER OF: JLS Rentals

DATE: November 20, 1985

DIGEST:

1. Solicitation requirement that washers and dryers for use in Air Force dormitories not be over 2 years old is not unduly restrictive where the agency reasonably determines that machines over 2 years old are inoperable more often than newer machines, and that, if machines are inoperable, enlisted personnel may be subject to disciplinary action for failure to meet dress code.
2. Department of Energy regulations that implement an energy conservation program and establish uniform testing requirements for washers and dryers utilizing formulas that measure tub capacity in terms of cubic feet do not preclude manufacturers from rating tub capacity in terms of pounds of dry weight. Therefore, specifications for washers and dryers having certain capacities expressed in pounds of dry weight are proper where protester has not shown them to be unreasonable.

JLS Rentals (JLS), the incumbent contractor, protests the specifications in invitation for bids (IFB) No. F04609-85-B-0060, issued by George Air Force Base, California (Air Force), for the lease, installation, and maintenance of 66 washers and 60 dryers at dormitories housing single personnel. Specifically, JLS protests that the IFB's description of minimum tub capacity in terms of pounds of dry weight instead of cubic feet is inconsistent with federal regulations, and that the requirement that machines not be over 2 years old unduly restricts competition.

The protest is denied.

The IFB specified that washers have a minimum tub capacity of "14 pounds dry weight" and that dryers have a minimum capacity of "18 pounds dry weight." The IFB also required that the machines be no more than 2 years old at the start of the basic year of the contract and at the start of either of 2 option years.

JLS contends that requiring washers and dryers to have tub capacities rated in terms of pounds dry weight is inconsistent with Department of Energy (DOE) regulations, 10 C.F.R. part 430 (1985), requiring manufacturers to rate washer and dryer tub capacity in terms of cubic feet. The regulation implements the government's energy conservation program for specified consumer products by, among other things, prescribing uniform testing requirements to determine the energy consumption of washers and dryers. For the purpose of those requirements, measurement of tub capacity is in cubic feet.

In a previous procurement, the Air Force and JLS agreed that the specification requirement for a tub capacity in pounds of dry weight was defective because of the DOE regulation. Big State Enterprises, 64 Comp Gen. 482 (1985), 85-1 CPD ¶ 459. The Air Force, in its report, has now taken the position that the regulation does not preclude manufacturers from rating tub capacity in terms of pounds of dry weight.

JLS concedes this point, but states that many manufacturers describe tub capacity in terms of cubic feet. JLS therefore maintains that washer/dryer solicitations should not express tub capacity in terms of pounds of dry weight in the interest of standardization, the enhancement of competition, and lowering government cost.

A contracting agency has the primary responsibility for determining its minimum needs and drafting requirements that reflect those needs. East Bay Auto Supply, Inc., B-218437.2, June 24, 1985, 85-1 CPD ¶ 716. Consequently, we will not question an agency's specifications describing its minimum needs unless there is a clear showing that the specifications have no reasonable basis. CMI Corp., B-216164, May 20, 1985, 85-1 CPD ¶ 572.

JLS has not alleged that it was precluded from competing by the specification, and the Air Force states

that JLS has been able to provide machines rated in terms of pounds of dry weight under other contracts. Furthermore, JLS admits that some major retailers describe tub capacity in terms of pounds of dry weight. Thus, there is nothing in the record that would support a finding that the Air Force requirement is unreasonable.

The protester also contends that the IFB requirement that washers and dryers not be over 2 years old exceeds the minimum needs of the Air Force. JLS contends that there is no functional difference between washers and dryers with less than or more than 2 years' use. JLS also alleges that in a washer/dryer solicitation at Travis Air Force Base, the incumbent contractor was allowed to keep its used equipment in place.

Where a protester contends that a solicitation requirement is unduly restrictive, the initial burden is on the procuring agency to establish that the restriction reasonably is necessary to meet the agency's minimum needs. Once the agency establishes support for its restriction, the burden shifts to the protester to show that the restriction is clearly unreasonable. The Trane Co., B-216449, Mar. 13, 1985, 85-1 CPD ¶ 306.

With regard to the protest of the 2-year age limitation, the Air Force states that, based on past experience, its engineers have found that service calls increase significantly when machines become approximately 2 years old. The machines are in constant use by Air Force personnel who are required by regulation to wear clean uniforms. If the machines become inoperable and are unavailable for use, Air Force personnel will not be able to meet the required uniform standards and may be subject to disciplinary action.

The Air Force further states that under the current contract, JLS provided machines that were more than 2 years old, and the Air Force had numerous complaints about repeated breakdowns and excessive noise. The Air Force asserts that after JLS replaced the machines with new equipment, the problems were eliminated.

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On the basis of the above, we find that the Air Force has established support for its 2-year age limitation. The burden therefore is on the protester to show that the restriction is clearly unreasonable.

Although JLS alleges that there is no functional difference between washers and dryers that are less than or more than 2 years old, it has failed to provide any evidence in support of its allegation and has not clearly shown that the Air Force's determination lacks a reasonable basis. See John Morris Equipment and Supply Co., B-218592, Aug. 5, 1985, 85-2 CPD ¶ 128 (where our Office found a 2-year age limitation for washers/dryers reasonable).

With regard to JLS's allegation that the Travis Air Force Base solicitation allowed the incumbent contractor to keep its used equipment in place, we note that each procurement is a separate transaction and the action taken on any one procurement does not govern the conduct of all similar procurements. See Business Equipment Center, Ltd., B-214814, May 23, 1984, 84-1 CPD ¶ 561.

The protest is denied.

for Seymour Efron
Harry R. Van Cleve
General Counsel